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September 27, 2011

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

**Re: Notice of Oral *Ex Parte* Communication**  
***Connect America Fund*, WC Docket No. 10-90**  
***A National Broadband Plan for Our Future*, GN Docket No. 09-51**  
***High-Cost Universal Service Support*, WC Docket No. 05-337**  
***Developing Unified Intercarrier Compensation Regime*, CC Docket No. 01-92**  
***Federal-State Joint Board on Universal Service*, CC Docket No. 96-45**  
***Wireline Competition Bureau Data Practices*, WC Docket No. 10-132**  
***Wireless Telecommunications Bureau Data Practices*, WT Docket No. 10-131**

Dear Ms. Dortch:

We submit this notice in compliance with Section 1.1206(b) of the Commission's rules.

On Friday September 23rd, Free Press policy director Matt Wood, political adviser Joel Kelsey and research director S. Derek Turner met with Zac Katz, Chief Counsel and Senior Legal Advisor to Chairman Genachowski, and Carol Matthey, Deputy Bureau Chief, Wireline Competition Bureau. Mr. Wood and Mr. Kelsey were present in person and Mr. Turner joined via telephone. The purpose of our meeting was to discuss Free Press' August 24th comments in response to the Commission's *Further Inquiry* in the above dockets.

We reiterated our concerns about the joint industry framework offered by six major price cap carriers and certain rural carrier associations. We emphasized the following points:

- We strongly emphasized our opposition to any increases in the Subscriber Line Charge (SLC), and conveyed the consumer advocate community's position that the Commission must not rubber stamp an industry authorized plan that will enrich highly profitable telecommunications carriers on the backs of consumers, particularly the poor and elderly. We noted that the SLC is a charge specifically created to allow ILECs to recover the federal portion of the cost of the local loop, and that past FCC cost studies concluded that the \$6.50 monthly SLC was already leading to *over-recovery* on 82 percent of lines. This level of over-recovery has likely increased with advances in technology and depreciation of sunk assets in the years hence. Further, we noted that increasing the SLCs in this case is completely inconsistent with the purpose of the SLC. The ABC plan contemplates SLC increases to offset what are primarily reductions in intrastate access payments; but the SLC exists to recover interstate local loop costs. We highlighted how the State Members

plan, while certainly not without its own problems, was a much more sensible global solution in which SLCs would not be increased. We also noted the inherent unfairness of vertically integrated LECs (with wireless and long distance divisions) saving billions on access payments while also raising billions in increased subscriber line charges on captive customers. We noted that this is even worse than the notion that carriers need to be “made whole” in the process of ICC reform: more than making them whole, the ABC plan unjustly enriches certain politically connected carriers.

- While there is a very real and very concerning rural broadband deployment issue, it is small in scope and likely best addressed through better means than this supposedly comprehensive plan inextricably tied to Intercarrier compensation reform. We noted that by the end of 2013, 98 percent of Americans will have access to at least 2 providers of 4G wireless services. We also noted that the updated national broadband map data indicates that 99 percent of Americans have access to basic broadband, and 97 percent have access to broadband with speeds above 3 Mbps in the downstream direction. These data indicate a broadband gap, but one that can be addressed through targeted public policies that do not increase costs to all telecommunications consumers. We suggested if the Commission has concerns with the accuracy of the NTIA data, then the responsible policy direction would be to not put the cart before the horse by awarding massive subsidies to already highly profitable companies without having confidence as to the actual need for those subsidies. We encouraged the FCC to complete its long neglected proceeding on broadband data and adopt Free Press’ recommendations, which were largely echoed by the National Broadband Plan.
- We asked that the Commission settle the Federal-state separations freeze issue and conduct cost-recovery studies before considering allowing incumbent carriers to reach further into consumers’ pockets by increasing the SLC. We noted how in the years since separations were last addressed, carriers shifting of revenues and costs between unregulated and regulated services, as well as state and federal jurisdictions, have created a situation where costs are already being over-recovered.
- We expressed concern with the ABC plan’s use for determining support of a cost model that does not consider all revenues earned (or potentially earned) by supported providers from services offered over the supported infrastructure. One of the problems with the current USF as detailed by the National Broadband Plan is the failure to consider revenues when determining support.
- We expressed concern with the CQBAT model itself, specifically the model’s consideration of large businesses alongside residential premises when calculating the award for a given Census Block. We highlighted how the model considers wireless towers to be large businesses, and noted how the ABC plan would result in the completely unnecessary subsidization of the wireless towers of carriers who have already, or are planning to deploy adequate backhaul facilities at these towers without any USF support.
- We expressed our concern with the ABC plan’s use of a right of first refusal, particularly one based on the wire center geography. We noted how the arguments in favor of a right of first refusal were contradictory to the ABC plan’s and the National Broadband Plan’s emphasis on reducing costs through competitive bidding.

- We emphasized concern about the reverse auction process itself, noting that it is structured in a manner that will lead to subsidies being directed to the areas that are most likely to otherwise see deployment without subsidy as technology costs decline and the broadband market matures. We also expressed concern about the lowest-common-denominator approach of the reverse auction process, noting that the focus on a per-household subsidy need alone would rule out providers who may be able to offer services that fulfill other important goals, such as higher quality services and lower monthly prices.
- The CAF will be by definition granting a monopoly to grantees, but will not have any constraints on what those monopolists can charge. We expressed concern with this aspect of ABC plan, as well as the plan's outrageous demands that all ETC, COLR and other regulation of price cap carriers be eliminated.
- We expressed concern with the so-called "compromise" framework's failure to adequately modernize incentives for rural rate of return carriers. We noted how the FCC over a decade ago concluded that rate of return produced poor incentives to control costs, and how the National Broadband Plan, Chairman Martin's 2008 global plan, and the State Members plan all contemplated making major changes to the rate of return system. We also noted how the compromise framework had a phantom cap on distributions to rate of return carriers, and how this would inevitably lead to the fund increasing in size over time, increasing the burden on ratepayers and thus harming the overall goals of universal service.
- We emphasized the considerable legal uncertainty surrounding the ABC plan, and expressed our concern that at the end of the legal process, the only "reform" left standing would be the higher Subscriber Line Charges for telephone consumers.
- We stressed our belief that the best way to meet America's broadband goals is to increase broadband adoption, and that focusing on fiscal reforms to the High Cost Fund in order to reduce the size of the program and return money to ratepayers is a prudent way to help boost adoption.

Very truly yours,

\_\_\_\_\_/s/\_\_\_\_\_  
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S. Derek Turner  
Research Director  
Free Press

cc: Zac Katz  
Carol Matthey